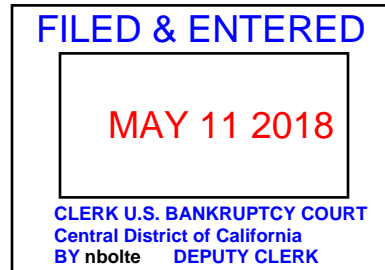


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CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

IN RE:

JOHN JEAN BRAL,

Debtor and Debtor-in-Possession.

Case No.: 8:17-bk-10706-SC

Chapter 11 Proceeding

**ORDER RE APPLICATION OF CRIME-
FRAUD EXCEPTION TO DOCUMENTS
SUBJECT TO THE ATTORNEY-CLIENT
AND WORK-PRIVILEGES**

DATE: May 3, 2018
TIME: 1:00 p.m.
PLACE: Courtroom 5C

1 On April 18, 2018 and continuing on May 3, 2018, a hearing was held on the issue of
2 whether the Court should be authorized, in reliance upon the crime-fraud exception to the attorney-
3 client and work product privileges, to conduct an *in camera* review of the documents listed on the
4 privilege logs submitted by Betsy Boyd, Levy, Small & Lallas, and Barry Beitler/BCRS
5 (collectively, the "Beitler Parties") to counsel for John Bral (see docket number 412) (the
6 "Privilege Logs").

7 The Court undertook and stated a complete and systematic review of the law surrounding
8 the crime-fraud exception, and held an extensive evidentiary hearing on the underlying facts of the
9 matter before it. The Court further engaged in extensive discussions with counsels on both the law
10 and the facts of the matter. The Court has further taken extensive guidance from the United States
11 Supreme Court decision *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009), on several
12 significant points, including this observation regarding the application of the crime-fraud exception
13 and an application of interlocutory appeal:

14 "Most district court rulings on these matters involve the routine application of settled legal
15 principles. They are unlikely to be reversed on appeal, particularly when they rest on
16 factual determinations for which appellate deference is the norm. See, e.g., *Richardson-*
17 *Merrell*, 472 U.S., at 434, 105 S. Ct. 2757, 86 L. Ed. 2d 340 ("Most pretrial orders of
18 district judges are ultimately affirmed by appellate courts"); *Reise v. Board of Regents*, 957
19 F.2d 293, 295 (CA7 1992) (noting that "almost all interlocutory appeals from discovery
20 orders would end in affirmance" because "the district court possesses discretion, and
21 review is deferential")."

22 *Mohawk Indus.* at 110.¹

23 The lessons learned by this Court from the *Mohawk Industries* decision are several, and
24 include that the trial court should take extra caution with all procedural and substantive rights with
25 respect to these important matters, and to carefully articulate and apply its understanding of the law
26 and interpretation of the facts presented.

27 For the reasons stated on the record, and all of them, it is hereby ORDERED:

28 A. On or before May 24, 2018, the Beitler Parties will update the Privilege Logs
to incorporate any additional documents claimed to be subject to the attorney-

¹ The Supreme Court, in *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009) clearly set forth that an order requiring production of documents based on the crime-fraud exception is not ripe for appeal. 9-0 decision (J. Sotomayor), one concurrence (J. Thomas). The current order is only one for *in camera* review at this time.


1 client or work-product privileges, and to correct the missing entries resulting
2 from the listing of a communication on one Privilege Log, without the entry of
3 a matching communication on the applicable other Privilege Log
4 (sender/recipient match);

5 B. On or before June 12, 2018, the Beitler Parties will deliver the documents
6 listed in the Privilege Logs, as updated by the entries referenced in paragraph
7 A above, to the Court for review (the “Documents”). The Documents will be
8 produced in sealed bankers box(es); and

9 C. The Court will complete its review of the Documents, *in camera*, and return
10 those Documents that are not deemed subject to disclosure, in the same
11 box(es). The Court’s review of the documents will be made by the Judge
12 personally, and the documents will not be viewed by any other person.
13 Documents deemed subject to further disclosure will be addressed in a
14 separate order.

15 D. Based on the decision of *Mohawk Industries, Inc. v. Carpenter*, *supra*, this
16 Court orders that no motion for stay pending appeal need be presented to this
17 Court, and that the parties are free to exercise their rights to present any such
18 motion directly to the Bankruptcy Appellate Panel for the Ninth Circuit or any
19 appropriate United States District Court.

20 # # #

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Scott C. Clarkson
United States Bankruptcy Judge

25 Date: May 11, 2018
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